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Attorney for Defendant  
DOMINICK SMITH

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Case No. 08cr1436-LAB
	)	
Plaintiff,	)	<b>STATEMENT OF FACTS</b>
	)	<b>AND</b>
v.	)	<b>POINTS AND AUTHORITIES</b>
	)	
DOMINICK SMITH,	)	Date: 6/16/08
	)	Time: 2:00 p.m.
Defendant.	)	Court: JUDGE BURNS
_____	)	

**STATEMENT OF FACTS**

An Indictment filed in this matter alleges that on April 6, 2008 the defendant transported illegal aliens and aided and abetted others.

Discovery received to date indicates that on April 6, 2008, defendant SMITH and other persons met at the Viejas Casino after which they traveled east on Interstate Highway 8. The discovery indicates that a vehicle driven by defendant SMITH, picked up

1 aliens and transported them some distance before the Border  
2 Patrol attempted to stop the vehicle. Discovery indicates that  
3 the vehicle failed to yield to the Border Patrol vehicle and  
4 eventually came to a stop on Interstate highway 8, traveling  
5 westbound in the eastbound lanes. All persons in the vehicle  
6 were reportedly arrested.  
7

8  
9 **POINTS AND AUTHORITIES**

10  
11 1. **STATEMENT OF DEFFENDANT.** Pursuant to *Federal Rule of*  
12 *Criminal Procedure 16(a)(1)(A) and (B), Brady v. Maryland*, 373  
13 U.S. 383 (1963) and the *Fifth* and *Sixth Amendments* to the *United*  
14 *States Constitution*, defendant requests disclosure of any  
15 statements, whether oral, written, or recorded made by him which  
16 are in the possession, custody, or control of the government, or  
17 which by the exercise of due diligence may become known to the  
18 government, regardless of to whom made. A defendant has the  
19 right to inspect any copy written or recorded statements made by  
20 him to government agents or within the custody or control of the  
21 government. This rule has been extended to permit discovery or  
22 a written summary of the defendant's oral statement contained  
23 the handwritten notes of the government agent. *United States v.*  
24 *Johnson*, 525 F.2d 999 (2<sup>nd</sup> Cir. 1975); *United States v. Pilnick*,  
25 267 F. Supp. 791 (S.D.N.Y. 1976; *Loux v. United States*, 389 F.2d  
26 911 (9<sup>th</sup> Cir. 1968).  
27  
28

1           2.     **DEFENDANT'S CRIMINAL RECORD.** Pursuant to *Federal Rule*  
2 *of Criminal Procedure 16(a)(1)(D)*, defendant requests disclosure  
3 of his criminal record.  
4

5           3.     **DOCUMENTS, TANGIBLE OBJECT, REPORTS.** Pursuant to  
6 *Federal Rule of Criminal Procedure 16(a)(1)(E)* defendant  
7 requests the opportunity to inspect and copy or photograph all  
8 books, papers, documents, data, photographs, and tangible  
9 objects buildings or places which are enumerated in subsections  
10 (i), (ii) and (iii).  
11

12           Defendant requests the opportunity to inspect and  
13 copy/photograph the following:

14               a.     the originals of the photographs supplied in  
15 discovery, specifically pages 0042, 0043, 0044, 0045, 0046,  
16 0047, 0048, 0049, 0050, and 0051;  
17

18               b.     all items found in a green 1997 Dodge Ram 2500,  
19 VIN 3B7KC23W1VM540876, California license number 5M48195;  
20

21               c.     all items found in a blue FORD Escort, VIN  
22 1FAFP13P8WW309280, California License 5YJJ275;  
23

24               d.     all records relating to an alleged encounter with  
25 the 1997 Dodge Ram 2500 referred to in subparagraph a. above  
26 that occurred on any date prior to April 6, 2008;  
27

28               e.     all records obtained relative to use of the  
following telephones:

1                   1)    Black Motorola i205, identification number  
2 36YEA4TX0;

3                   2)    Black Cricket UTstarcom, identification  
4 number 7440317614;

5                   3)    Black Motorola Boost i455, identification  
6 number 364V6N8GHK;

7                   4)    Black Motorola L7c, identification number  
8 02015249412.  
9

10                  f.    all video and/or photographs of defendant and/or  
11 the Dodge Ram 2500 vehicle obtained from any source.  
12

13                  4.    **REPORTS OF EXAMINATIONS AND TESTS.** Defendant also  
14 requests any and all results and reports of scientific tests or  
15 experiments conducted by the government pursuant to *Federal Rule*  
16 *of Criminal Procedure 16(a)(1)(F)*.  
17

18                  5.    **EXPERT WITNESSES.** Pursuant to *Federal Rule of*  
19 *Criminal Procedure 16(a)(1)(G)* defendant requests disclosure of  
20 a written summary of testimony the government intends to use  
21 under *Federal Rules of Evidence 702, 703, or 705*.  
22

23                  6.    **NOTICE OF GOVERNMENT'S INTENT TO USE EVIDENCE.**  
24 *Federal Rule of Criminal Procedure 12(b)(4) (B)* provides in  
25 pertinent part:  
26

27                    "At the arraignment or as soon thereafter  
28 as practicable the defendant may, in order  
to have an opportunity to move to suppress

1 under Rule 12 (b)(3)(C), request  
2 notice of the government's intention to use  
3 (in its evidence-in-chief at trial) any evidence  
4 which the defendant may be entitled to discover  
5 under Rule 16."

6 The purpose of this rule is to avoid needless motions  
7 by the defense to suppress evidence that is not going to be used  
8 at trial. The Rule places a burden on the government to review  
9 its case and let the defendant know what evidence the government  
10 is going to use. In this way, the Rule seeks to "eliminate from  
11 the trial disputes over police conduct not immediately relevant  
12 to the question of guilt." *Jones v. United States*, 362 U.S.  
13 257, 264 (1960).

14  
15 7. **RULE 404(b) EVIDENCE.** Defendant requests the  
16 government be ordered to provide discovery and reasonable notice  
17 of evidence of other crimes, wrongs, or acts of the defendant  
18 that the government contends may be proof of motive,  
19 opportunity, intent, preparation, plan, knowledge, identity, or  
20 absence of mistake or accident. Defendant must have access to  
21 such evidence in order to be able to make a timely motion to  
22 exclude it at trial and for the purposes of the "balancing"  
23 required by Rule 403. See *United States v. Cook*, 609 F.2d 1174  
24 (9<sup>th</sup> Cir. 1985).

25  
26 8. **RULE 609 EVIDENCE.** Defendant requests that the  
27 government produce all evidence of prior convictions of the  
28

1 defendant that the government intends to introduce at trial, for  
2 impeachment purposes, in the event the defendant testifies.  
3 Pretrial production of such convictions is necessary in order  
4 that the defendant may determine whether such convictions are  
5 admissible under *Rules 403 and 609*. The defendant further  
6 requests that the government supply the defendant with the  
7 notice required by *Rule 609(b)* relative to convictions in excess  
8 of 10 years old which the government intends to use for  
9 impeachment at trial.  
10  
11

12       **9.     PRESERVATION OF AGENTS' ROUGH NOTES.** Defendant  
13 requests an order that the rough notes of agents be ordered  
14 preserved at this time so that appropriate motions may be  
15 brought in the future of their production. *United States v.*  
16 *Harris*, 543 F.2d 1247 (9<sup>th</sup> Cir. 1976).  
17

18       **10.    TIMETABLE FOR DISCLOSURE OF JENCKS MATERIAL.**  
19 Defendant requests that the court establish a timetable for  
20 disclosure of *Jencks* material pre-trial to avoid unnecessary  
21 delay during the trial for investigation and in order that  
22 counsel may prepare for cross-examination.  
23

24       **11.    CO-DEFENDANT'S STATEMENTS.** Defendant requests  
25 disclosure of statements of co-defendants as such statements may  
26 exculpate the defendant and should therefore be disclosed under  
27 *Brady*, *infra*. In addition, disclosure is necessary so that  
28 defendant can examine said statements to determine, pursuant to

1 *Bruton v. United States*, 391 U.S. 123 (1968), whether the  
2 statements implicate the defendant and should be redacted or  
3 whether severance should be sought.

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5 12. **GOVERNMENT AGREEMENTS WITH WITNESSES.** Defendant  
6 requests disclosure of all agreements between the government and  
7 prosecution witnesses which may tend to show bias or motive not  
8 to tell the truth.

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10 13. **BRADY AND GIGLIO MATERIAL.** Pursuant to *Brady v.*  
11 *Maryland*, 373 U.S. 383 (1963), *United States v. Agurs*, 42 U.S.  
12 97 (1976), and *Giglio v. United States*, 405 U.S. 150 (1972),  
13 defendant requests that the court order the government to  
14 disclose all evidence in its possession favorable to him on the  
15 issue of guilt, or evidence which tends to effect the  
16 credibility of the prosecution's case

17  
18 14. **GOVERNMENT REVIEW OF LAW ENFORCEMENT PERSONNEL FILES.**  
19 The defendant requests that the government examine the personnel  
20 files and any other files within its custody, care or control,  
21 or which could be obtained by the government, for all testifying  
22 witnesses, including testifying officers and agents who may have  
23 been controlling or contacting any confidential informant who  
24 may be involved in this case. The defendant requests that these  
25 files be reviewed by the government attorney for evidence of  
26 perjurious conduct or other like dishonesty, or any other  
27 material relevant to impeachment, or any information that is  
28

1 exculpatory, pursuant to its duty under *U.S. v. Henthorn*, 931  
2 F.2d 29 (9<sup>th</sup> Cir. 1991). See *U.S. v. Jennings*, 960 F.2d 1488,  
3 1492 (9<sup>th</sup> Cir. 1992).  
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5 Dated: May 24, 2008  
6

7 Respectfully submitted,  
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11 Attorney for Defendant  
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